IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 200 OF 2004.

Shri Ashraf Abdul Gaffar Khan,
s/o Abdul Gaffar Khan,
r/o H. No.12, Behind Vaz Pharmacy,
Baina, Vasco-da-Gama, Goa,
through his next friend and
brother Shri Abu Khan,
behind Vaz Medical Stores,
Baina, Vasco-da-Gama, Goa. ..... Applicant.

VERSUS

STATE OF GOA,
Through Vasco Police Station. ..... Respondent.

Shri Nitin N. Sardessai, Advocate for the Applicant.

Shri S.N. Sardessai, Public Prosecutor for the State/Respondent.

CORAM: N. A. BRITTO, J.

DATE: 16TH SEPTEMBER, 2004.

ORAL ORDER :

Heard Shri N. Sardessai, the learned counsel on behalf of the applicant/accused and Shri S.N. Sardessai, the learned Public Prosecutor on behalf of the Respondent.

2. The applicant has failed to obtain bail for the fourth time from the learned Sessions Judge, Margao and has now approached this Court for the grant of bail.

3. There is no dispute that upon a complaint filed by Zaheeda Kazi dated 6.5.2004, a crime came to be registered initially under Sections 342, 376, 323, 504 and 420 I.P.C. , but after investigation charge-sheet has been filed against the accused only under Sections 376, 292 (ii)(a) I.P.C. which is pending committal to the Court of Sessions.

4. From the complaint of the said Zaheeda Kazi, it appears that the said Zaheeda was initially employed in the year 1995 or thereabout with the accused and both got subsequently married in the year 2000 or thereabout. It appears that thereafter her story in the complaint is one of her marriage having turned sour.

5. Shri Sardessai, the learned counsel for the accused has submitted that in the entire complaint there is not a whisper of any forcible sexual intercourse and that in any event the said complainant having been the wife of the accused, forcible sexual intercourse would be punishable with imprisonment of either description for a term which may extend to two years or fine or with both. It is also submitted by Shri Sardessai, the learned counsel that the offence under Section 292 (ii)(a) is bailable.

6. The learned Sessions Judge appears to have been swayed to refuse bail because in his view the offences allegedly committed by the accused were serious. If one looks at the punishment provided for

the said offences, which exercise the learned Sessions Judge did not do at all, the offences alleged against the accused do not appear to be as serious as thought by the learned Sessions Judge. The accused was admittedly arrested on 7.5.2004 and since then has been in custody. There are a number of factors to be considered whilst admitting an accused to bail and seriousness of an offence is the main factor to be considered. Considering that the offences allegedly committed by the accused are not all that serious, in my opinion refusing bail to the accused would amount to punishing him without trial.

7. Considering the circumstances, in my opinion, this is a fit case to admit the accused to bail. The accused shall be released on bail upon execution of a Bond of Rs.15,000/- with one surety in the like amount to the satisfaction of the learned Sessions Judge, Margao.
8. Application granted on the above terms.

Expedite copy.

N. A. BRITTO, J.

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